

## ***Discrimination Prohibited in Nebraska***

### ***(Continued)***

BLACK'S LAW DICTIONARY, ABRIDGED 6<sup>TH</sup> EDITION (1991), defines discrimination as:

In Constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those no reasonable distinction can be found. Unfair treatment or denial of normal privileges to persons because of their race, age, sex, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.

Federal statutes prohibit discrimination in employment on basis of sex, age, race, nationality, religion or being handicapped; *e.g.* Title VII of 1964 Civil Rights Act, Age Discrimination in Employment Act, Equal Pay Act, Sex Discrimination in Employment Based on Pregnancy Act. Other federal acts, as supplemented by court decisions, prohibit discrimination in voting rights, housing, extension of credit, public education and access to public facilities.

While Merriam-Webster defines racism as:

- A belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race,
  - A doctrine or political program based on the assumption of racism and designed to execute its principles
  - A political or social system founded on racism
- Racial prejudice or discrimination

### [U.S. Equal Opportunity Commission \(EEOC\)](#)

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

Laws enforced by the EEOC include:

- [Title VII of the Civil Rights Act of 1964 \(Title VII\)](#) – makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex.

- [The Pregnancy Discrimination Act](#) - makes it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
- [The Equal Pay Act of 1963 \(EPA\)](#) - Makes it illegal to pay different wages to men and women if they perform equal work in the same workplace.
- [The Age Discrimination in Employment Act of 1967 \(ADEA\)](#) - protects people who are 40 or older from discrimination because of age.
- [Title I of the Americans with Disabilities Act of 1990 \(ADA\)](#) - Makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.
- [Sections 102 and 103 of the Civil Rights Act of 1991](#) - Among other things, this law amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.
- [The Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#) – prohibits employment discrimination on the basis of genetic information.

### [Nebraska Constitutional Provisions](#)

Neb. Const. Art. 1, §30(1), a provision in the Bill of Rights, was adopted in 2008 after an initiative measure and it provides in part:

The state shall not discriminate against ... any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

Subsection (6)(d) specifies that for purposes of this section, state shall include any political subdivision of or within the state (such as counties). Further, subsection (7) provides:

The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Nebraska's antidiscrimination law.

### [Nebraska Equal Opportunity Commission \(NEOC\)](#)

The Nebraska Equal Opportunity Commission (NEOC) is a neutral Administrative agency created by statute in 1965 to enforce the public policy of the state against discrimination. The principal function of the NEOC is to receive, investigate and pass upon complaints of unlawful discrimination occurring anywhere within the State of Nebraska in the areas of employment, housing and public accommodations.

The NEOC is authorized to enforce the following statutes: Nebraska Fair Employment Practice Act (FEPA); Nebraska Age Discrimination in Employment Act (Age Act); Equal Pay Act; Nebraska Fair Housing Act; and the Act Providing Equal Enjoyment of Public Accommodations. (PA Act). To prevent duplicative proceedings, the NEOC is authorized, by federal statute, to

receive and investigate - concurrently with charges filed under the listed state laws - charges alleging violations of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, Title I of the Americans with Disabilities Act, the ADA Amendments Act of 2008, and the U.S. Fair Housing Act. As stated on the NEOC website, the mission of the Commission is “Eliminating Discrimination in Nebraska.”

All provisions of the laws described below include prohibitions on retaliation. Anyone who has opposed any practice made unlawful by the statutes or who has participated in any manner in any proceeding to enforce the statutes is protected.

- [Nebraska Fair Employment Practice Act](#) - (FEPA - Neb. Rev. Stat. §§ 48-1101 *et seq.*)
  - Discrimination in employment on the basis of race, color, national origin, religion, sex (including pregnancy), disability, or marital status is prohibited in Nebraska. In general, covered entities include most private and non-profit employers with 15 or more employees, state and **local government subdivisions of any size**, employment agencies and labor organizations.
  - Unlawful employment practices generally include discrimination in the area of hiring and promotion (e.g., classification, recruitment, selection); compensation (pay and benefits); discipline (including termination); and other terms, conditions and privileges of employment (e.g., training and development, relationships and associations, accommodation of disabilities and religious beliefs, freedom from workplace harassment). The FEPA law also contains provisions barring retaliation. Anyone who has opposed any practice made unlawful by the statutes or who has participated in any manner in any proceeding to enforce the statutes is protected.
  - In addition, if an individual complains about, or refuses to participate in, activity which is unlawful under state or federal laws, and the employer takes negative action, that individual may file with the NEOC under the provisions of Section 48-1114(3).
- [Nebraska Age Discrimination in Employment Act](#) (Age Act -Neb. Rev. Stat. §§ 48-1001 to 48-1010)
  - Discrimination in employment on the basis of age is also prohibited in Nebraska. In general, covered entities include most private and non-profit employers with 20, or more employees, state and local government subdivisions of any size, employment agencies and labor organizations. Unlawful employment practices generally include discrimination in the area of hiring and promotion (e.g., classification, recruitment, selection); compensation (pay and benefits); discipline (including termination); and other terms, conditions and privileges of employment (e.g., training and development, relationships and associations, freedom from workplace harassment). The Age law also contains provisions barring retaliation. Anyone who has opposed any practice made unlawful by the statutes or who has participated in any manner in any proceeding to enforce the statutes is protected.
- [Equal Pay Act](#) (Neb. Rev. Stat. §§ 48-1210 to 48-1227.01)

- It is unlawful to discriminate on the basis of sex by paying wages to one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs. The law also contains provisions barring retaliation. Anyone who has opposed any practice made unlawful by the statutes or who has participated in any manner in any proceeding to enforce the statutes is protected.
- [Nebraska Fair Housing Act](#) (Neb. Rev. Stat. §§ 20-301 to 20-344)
  - Discrimination in housing on the basis of race, color, national origin, religion, sex, disability or familial status is prohibited in Nebraska. Covered entities generally include residential property owners, property managers, realtors and multiple listing services. Exemptions exist for dwellings owned or operated by religious organizations and bona fide private clubs for noncommercial purposes, housing for older persons and owner-occupied private homes in which no more than three sleeping rooms are rented. Unlawful housing practices include discrimination in residential property such as in advertisement, acquisition (showing, negotiating or transmitting offers for sale or rental), financing and possession (terms, conditions and peaceful enjoyment).
- [Act Providing Equal Enjoyment of Public Accommodations](#) (PA - Neb. Rev. Stat. §§ 48-1001 to 48-1010)
  - Discrimination in the enjoyment of places of public accommodation is prohibited in Nebraska on the basis of race, color, national origin, ancestry, religion or sex. Covered entities generally include an establishment offering goods and services to the general public. Limited exemptions exist for bona fide private clubs and public accommodations owned or operated by religious organizations. Unlawful practices include:
    - withholding or denial of services;
    - withholding privileges of facilities of public accommodations;
    - and unlawful segregation in place of public accommodation.

The NEOC's FY [2017/2018 Annual Report](#) shows that charges were taken in 58 of the 93 counties. Of the 985 new cases filed in this timeframe, there were 922 employment cases, 40 housing cases and 23 public accommodation cases. As noted by the NEOC, of the new charges filed, there was a 5% decrease from FY 16/17. In 2017/2018, the following number of charges (not cases) filed:

- Fair Employment Act – 853;
- Nebraska Age Discrimination in Employment Act – 206;
- Equal Pay Act of Nebraska – 21;
- Nebraska Fair Housing Act – 40; and
- Nebraska Civil Rights Act of 1969 (Public Accommodations) – 23.

Further, the NEOC's case tracking system shows a count of the descriptive data for its case intake and production, as follows:

| BASIS                          | FEPA | EQ<br>PAY | AGE | HOUSING | PUBLIC<br>ACCOM. | TOTALS |
|--------------------------------|------|-----------|-----|---------|------------------|--------|
| RACE                           | 280  | n/a       | n/a | 11      | 21               | 312    |
| COLOR                          | 243  | n/a       | n/a | 5       | 21               | 269    |
| SEX                            | 246  | 18        | n/a | 6       | 1                | 271    |
| SEX – PREGNANCY                | 25   | n/a       | n/a | n/a     | n/a              | 25     |
| AGE (40-70)                    | n/a  | n/a       | 201 | n/a     | n/a              | 201    |
| RELIGION                       | 34   | n/a       | n/a | 1       | 0                | 35     |
| NATIONAL ORIGIN/<br>ANCESTERY  | 130  | n/a       | n/a | 5       | 4                | 139    |
| DISABILITY                     | 374  | n/a       | n/a | 29      | n/a              | 403    |
| MARITAL STATUS                 | 7    | n/a       | n/a | n/a     | n/a              | 7      |
| FAMILIAL STATUS                | n/a  | n/a       | n/a | 1       | n/a              | 1      |
| RETALIATION                    | 542  | 8         | 44  | 7       | 13               | 614    |
| RETALIATION<br>(WHISTLEBLOWER) | 92   | n/a       | n/a | n/a     | n/a              | 92     |

n/a – not applicable to the section of law.

Additionally, identified in the 2017/2018 report are issues in employment and public accommodations charges filed (numbers of charges follow the type of charge): discharge (506), terms and conditions of employment (423), harassment (249), reasonable accommodation (205), discipline (203), wages (180), constructive discharge (149), assignment (102), sexual harassment (93), suspension (88), failure to hire (85), failure to promote (45), failure to train (38), intimidation (33), demotion (26), public accommodation issue (23), benefits (20), benefits-insurance (18), references unfavorable (10), breach of confidentiality (9), prohibited medical inquiry/exam (9), union representation (5), severance pay denied (5), benefits-retirement/pension (4), layoff (3), reinstatement (3), other (2), English language only rule (1), retirement-involuntary (1) and seniority (1).

## [BEST PRACTICES FOR EMPLOYERS AND HUMAN RESOURCES/EEO PROFESSIONALS](#) (source EEOC)

### How to Prevent Race and Color Discrimination

#### General

- **Train** Human Resources managers and all employees on **EEO laws**. Implement a **strong EEO policy** that is **embraced at the top levels** of the organization. Train managers, supervisors and employees on its contents, enforce it, and hold them accountable.
- Promote an **inclusive culture** in the workplace by fostering an environment of professionalism and respect for personal differences.
- **Foster open communication** and early dispute resolution. This may minimize the chance of misunderstandings escalating into legally actionable EEO problems. An **alternative dispute-resolution (ADR) program** can help resolve EEO problems without the acrimony associated with an adversarial process.

- Establish neutral and objective criteria to **avoid subjective employment decisions** based on **personal stereotypes** or **hidden biases**.

### Recruitment, Hiring, and Promotion

- Recruit, hire, and promote with EEO principles in mind, by implementing practices designed to widen and **diversify the pool of candidates** considered for employment openings, including openings in upper level management.
- Monitor for EEO compliance by **conducting self-analyses** to determine whether current employment practices disadvantage people of color, treat them differently, or leave uncorrected the effects of historical discrimination in the company.
- Analyze the duties, functions, and competencies relevant to jobs. Then create **objective, job-related qualification standards** related to those duties, functions, and competencies. Make sure they are consistently applied when choosing among candidates.
- Ensure **selection criteria** do not disproportionately exclude certain racial groups unless the criteria are valid predictors of successful job performance and meet the employer's business needs. For example, if educational requirements disproportionately exclude certain minority or racial groups, they may be illegal if not important for job performance or business needs.
- Make sure **promotion criteria** are made **known**, and that **job openings** are **communicated** to all eligible employees.
- When using an outside agency for recruitment, make sure the agency does not **search** for **candidates** of a particular race or color. Both the employer that made the request and the employment agency that honored it would be liable.

### Terms, Conditions, and Privileges of Employment

- **Monitor** compensation practices and performance appraisal systems for **patterns of potential discrimination**. Make sure performance appraisals are based on employees' actual job performance. Ensure consistency, i.e., that comparable job performances receive comparable ratings regardless of the evaluator, and that appraisals are neither artificially low nor artificially high.
- Develop the potential of employees, supervisors, and managers with EEO in mind, by providing **training and mentoring** that provides workers of all backgrounds the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs. In addition, employees of all backgrounds should have equal **access to workplace networks**.
- Protect against retaliation. Provide clear and credible assurances that if employees make complaints or provide information related to complaints, the employer will **protect employees from retaliation**, and consistently follow through on this guarantee.

### Harassment

Adopt a strong anti-harassment **policy**, periodically **train** each employee on its contents, and vigorously **follow and enforce** it. The policy should include:

- A clear **explanation** of prohibited conduct, including examples;
- Clear assurance that employees who make complaints or provide information related to complaints will be **protected against retaliation**;
- A clearly described **complaint process** that provides multiple, accessible avenues of complaint;

- Assurance that the employer will protect the **confidentiality** of harassment complaints to the extent possible;
- A complaint process that provides a prompt, thorough, and impartial investigation; and
- Assurance that the employer will take **immediate and appropriate corrective action** when it determines that harassment has occurred.

### BEST PRACTICES AND TIPS FOR EMPLOYEES (source EEOC)

#### How to Prevent Race and Color Discrimination in the Workplace

- Respect cultural and racial differences in the workplace.
- Be professional in conduct and speech.
- Refuse to initiate, participate, or condone discrimination and harassment.
- Avoid race-based or culturally offensive humor or pranks. When in doubt, leave it outside the workplace.
- Familiarize yourself with the company's workplace policies and act responsibly.
- Attend training on EEO principles and learn about your legal rights and responsibilities under the anti-discrimination laws. Also visit [www.eeoc.gov](http://www.eeoc.gov) for information on discrimination and harassment.
- Be pro-active. Report incidents of inappropriate, discriminatory, harassing or abusive behavior to your supervisor, Human Resources department, union, or management.
- If you experience or witness discrimination or harassment contact EEOC or your local human rights commission.

*Editor's Note: Legal Line is a feature that will periodically appear in NACO E-Line. This article has been prepared by Elaine Menzel of the NACO legal staff. Legal Line is not intended to serve as legal advice. Rather, it is published to alert readers to court decisions and legal or advisory matters important to county government. For a specific opinion on how the information contained in this article or that which will be discussed in future issues relates to your county, consult your county attorney or personal counsel.*